

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SELWYN A. BURCH

Appeal No. 2000-1302
Application No. 08/766,057

ON BRIEF

Before STAAB, McQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 12-14 and 19, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a process for retrofitting an existing bus seat. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Ericson	3,259,673	Jul. 05, 1966
Hoskinson	3,616,171	Oct. 26, 1971

Appellant's admitted prior art on page 1 (second paragraph) and page 2 (third paragraph) of the specification.

Claims 12-14 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over appellant's admitted prior art (i.e., the construction of existing school bus seats) in view of Hoskinson and Ericson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 18) for the examiner's complete reasoning in support of the rejection and to the brief and reply brief (Paper Nos. 17 and 19) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the

examiner. As a consequence of our review, we make the determinations which follow.

Appellant's brief states on page 4 that "[c]laims 12-14 and 19 stand or fall together." Therefore, in accordance with 37 CFR § 1.192(c)(7), we have selected claim 19, the sole independent claim on appeal, as the representative claim to decide this appeal, with claims 12-14 standing or falling therewith.

At the outset, we note that the first recited step of claim 19 appears to be inconsistent with appellant's underlying disclosure (see specification, page 6). Based on our understanding of appellant's specification, it appears that the first step of claim 19 should read --removing the existing plywood [or plywood with attached foam and skin] from the frame of the existing bus seat--. In the interest of judicial efficiency, for purposes of this appeal, we have interpreted the first step of claim 19 as a step of removing the plywood and any foam and skin attached thereto from the frame of the existing bus seat. However, in the event of further prosecution of the claimed subject matter, the

examiner should review the claim and disclosure and take appropriate action with regard to this issue.

The examiner characterizes the admitted prior art on pages 3-4 of the answer as follows:

On page 1 of the specification, the construction of existing school bus seats is disclosed. In general, the bus seats are comprised of a metal frame and a plywood superstructure. Plywood is installed on the back of the frame and on the seat portion of the frame. Preformed foam cushions are then placed on the plywood, presumably to cover the top of the seat portion and both sides of the seat back, after which vinyl is stretched over the cushions and sewn together. The vinyl is easily torn, and vandalism is quite common, particularly on the rear of the bus seat. Although no specific disclosure is provided as to how vandalized bus seats are repaired, common sense would tend to suggest at least the following options. The torn vinyl can be removed and the existing plywood and cushions can be recovered with new vinyl. Alternately, depending on the extent of the vandalism, all of the components of the bus seat (excluding the seat frame) can be replaced. However, there is no suggestion in appellant's admitted prior art to replace those components with sections of plywood having elastomer skinned urethane foam adhered thereto.

Appellant does not contest the findings of the examiner with regard to the admitted prior art. Appellant also does not appear to challenge the examiner's determination that it would

have been obvious to one skilled in the art at the time of appellant's invention to replace the components of vandalized bus seats of the admitted prior art with an integrally molded unit comprising wood having an elastomer skinned urethane foam adhered thereto to provide a bus seat with improved resistance to skin tearing (answer, page 5) in comparison to the cast skin-covered seat cushions of the admitted prior art in view of the teachings of Hoskinson (see column 1, lines 5-15).

Hoskinson discloses a process for making such an integrally molded unit comprising the steps of forming the skin by casting a thermoplastic elastomeric polymer (column 1, lines 66-67) to a mold using either slush-molding or rotary-casting techniques to form a first layer 8 of the skin within the mold, charging a liquid mixture of a liquid resin and asbestos fines into the mold to fuse to the layer 8 and form a second layer 7 of the skin 6, inserting a wood bottom in the mold, adding sufficient polyurethane foamable mixture to fill the mold when foaming is complete and allowing the foamable mixture to foam.

Ericson teaches that, in making a composite article having a resilient core, such as polyurethane foam, for example, united with an overlying vinyl cover skin, airless spraying of the vinyl polymer skin material onto the mold presents advantages over forming the skin by rotational (rotary) casting and slush molding (column 1, line 30 *et seq.*).

In our view, one skilled in the art reading the combined teachings of Hoskinson and Ericson would have been led to form the integrally molded seat cushion unit comprising wood having an elastomer skinned urethane foam adhered thereto for repairing damaged bus seats of the admitted prior art by spraying the vinyl polymer onto the mold surface, inserting a wood reinforcement into the mold, filling the mold with foamable material and allowing the foamable material to foam. We have considered appellant's argument in the reply brief that one skilled in the art having both Hoskinson and Ericson before him/her would be confused and would not look to combine their teachings, but we do not agree. From our perspective, one skilled in the art having knowledge of the teachings of both Hoskinson and

Ericson would have been informed that, while rotary casting or slush molding *might* be suitable for some objects, and indeed even perhaps for the retrofit bus seat cushion, airless spraying to deposit the skin material onto the mold surface would be more certain to yield suitable results, in that it overcomes disadvantages inherent in rotary casting and slush molding and can satisfactorily produce relatively large size as well as small

articles (column 1, lines 66-69 of Ericson). That the issue date of the Hoskinson patent is later than that of the Ericson patent (reply brief, page 2) does not dissuade us from this opinion, especially since there is no indication in Hoskinson that the disadvantages identified by Ericson have been overcome for relatively large or complex articles.

Appellant's argument that Hoskinson does not teach spraying (brief, page 5) is not indicative of any error on the examiner's part, as the rejection in this case is not based on Hoskinson alone but on the combined teachings of the admitted prior art, Hoskinson and Ericson. Nonobviousness cannot be established by attacking the references individually when the

rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

Finally, appellant's argument on page 2 of the reply brief that Hoskinson does not show a collar on the back of a bus seat is not persuasive with respect to claim 19 because claim 19 does not recite a collar. It is well established that limitations not appearing in the claims cannot be relied upon for patentability. In re Self, 671 F.2d 1344, 1348, 213 USPQ 1, 5 (CCPA 1982).

For the foregoing reasons, appellant's brief and reply brief do not persuade us of any error in the examiner's determination of obviousness of the subject matter of claim 19. Accordingly, we shall sustain the examiner's rejection of claim 19, as well as claims 12-14 which stand or fall therewith (brief, page 4).

CONCLUSION

To summarize, the decision of the examiner to reject claims 12-14 and 19 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

LAWRENCE J. STAAB)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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